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August 23, 2006

VIA FACSIMILE AND MAIL
(510) 464-7970

Ken Kirkey
ABAG Principal Planner
Association of Bay Area Governments
P.O. Box 2050
Oakland, California 94604-2050

Re: ABAG Memorandum of August 16, 2006 Identifying Potential RHNA Methodology Factors

Dear Mr. Kirkey:

Your Memorandum of August 16, 2006 identifies factors that ABAG might consider in developing the methodology for allocating the regional housing needs. We have the following comments regarding the contemplated factors.

As you know, ABAG is required to develop a proposed methodology for distributing the existing and projected regional housing needs to agencies within ABAG pursuant to Government Code¹ section 65584.04. The Legislature requires ABAG to develop this methodology to be consistent with the factors outlined in Section 65584.04(d). We therefore urge ABAG to follow these factors as closely as possible.

Penalty Factors: ABAG's Memorandum includes the following as methodology factors: "Penalties - failure to meet last allocation" and "Penalties - failure to certify Housing Element in last cycle." These two factors are not specifically authorized for consideration by section 65584.04(d). Section 65584.04(d)(9) is a catchall provision that authorizes "any other factors adopted by the council of governments." Arguably, the penalty factors listed by ABAG fall under this catchall provision. However, these two penalty factors are not reasonably related to addressing the existing and projected housing needs. The housing laws are written to address existing and future housing need, not to retrospectively penalize an agency. (See for example sections 65584(a)(1), 65584(b), 65583. which reference the "*existing and projected housing need*.") Moreover, the penalty factors are overbroad—they do not take into account self-

¹ All statutory references are to the Government Code unless noted otherwise.

certification, a process available to an agency under the housing statutes. We therefore request that these factors be excluded from the methodology determination.²

The most important factors should be the ones identified in the statute. We are concerned with comments made by ABAG staff that only factors which are comparable across jurisdictions will be used in developing the methodology. If there is strict adherence to that concept, it will be impossible to apply factors such as lack of water and sewer services, (un)availability of lands, policies protecting agricultural land, etc. because survey data will naturally be unavailable in many jurisdictions. This would essentially eliminate the use of many of the factors outlined in section 65584.04, which was not the legislative intent. Moreover, it would essentially penalize those jurisdictions with readily available data simply because other jurisdictions do not have data in the same form. We believe that most of the data needed to evaluate the methodology factors are either available to ABAG or are easily ascertainable. For example, it should not be very difficult to determine if, and to what extent, a particular jurisdiction has water and sewer capacity.

Among the statutory factors, prime consideration should be given to policies protecting agricultural lands, protection of open space, lack of capacity for water and sewer services, and protection of lands under federal and state programs.

Further, clarification is sought as to the following:

1. Are we correct in assuming that the second category on your list of Protected Open Space -- which includes lands protected by "non-profit entities" -- includes lands voluntarily protected by landowners, which are still privately owned, but subject to an open space or conservation agreement? [Again, the latter was a specific factor suggested at the June meeting.]
2. Does "city-centered growth policies" encompass the statutory "agreements between a county and cities in a county" [Section 65584.04(d)(5)]
3. Does "water and sewer capacity" envision the constraints of the rural housing factor, i.e., wells and septic systems, and the increasing limitations on those resources due to application of the Clean Water Act by the Regional and State Water Boards?

² There is only one statute—Section 65584.09—that addresses what happens when a city or county fails to identify adequate sites in the prior planning period. That statute is very narrow in scope (applies to housing elements due on or after January 1, 2006) and only requires that the city or agency zone or rezone sites within the first year of the planning period of the new housing element. It does not affect how the regional housing needs is allocated to the city or county in the next housing cycle based on past performance. The ABAG penalty factors would apparently apply to every agency (regardless of when the agency's housing element was due), and would be a factor in determining the regional housing needs allocation. This is unsupported by the housing statutes.

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Additional Suggested Factors: Additionally, we suggest that the following factors be included in developing the methodology:


1. Other physical constraints (in addition to geologic constraints listed by ABAG)—including topography; and
2. State mandated policies, including LAFCO, airport land use compatibility plans, etc.


Application of Factors: It is our understanding that the housing needs allocation will be conducted separately for each of the 109 member jurisdictions of ABAG, rather than a lump sum allocation calculated countywide. Additionally, you indicated that if a factor outlined in section 65584.04(d) decreases an agency's allocation, the difference will be absorbed region-wide. For example, if a factor reduces the allocation for one city, that reduction will be divided by the remaining 108 agencies rather than divided just between the other cities within the county. If our understanding of this process is incorrect, please advise at your earliest convenience.


We are very interested in working with ABAG and its member jurisdictions in developing a fair and reasonable methodology that addresses existing and projected housing needs – but such methodology must at the same time recognize the specific needs and limitations of each jurisdiction.

In that regard, we would like ABAG to clarify how it will apply the factors outlined in section 65584.04(d). This is a crucial step in the methodology development process. Section 65584.04(e) provides that each council of government “shall explain in writing how each of the factors described in subdivision (d) was incorporated into the methodology and how the methodology is consistent with subdivision (d) of section 65584.” Please advise at your earliest convenience.

Very truly yours,

By: 
DIANE DILLON, Supervisor
Napa County Board of Supervisors

By: 
RICHARD BOTTARINI, Director
Community Development Department,
City of Napa

By: 
HOWARD SIEGEL,
Community Partnership Manager,
County of Napa

cc: Paul Fassinger, ABAG
Ken Moy, ABAG Counsel ✓